

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 92-5838

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

VINCENT DEVITA,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Fox, Chief District Judge. (CR-92-64-5)

Submitted: January 23, 1996

Decided: March 13, 1996

Before NIEMEYER, HAMILTON, and WILLIAMS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Alexis C. Pearce, THARRINGTON, SMITH & HARGROVE, Raleigh, North Carolina, for Appellant. Margaret Person Currin, United States Attorney, David P. Folmar, Jr., Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Vincent Devita entered a guilty plea to conspiracy to possess with the intent to distribute cocaine, 21 U.S.C. § 841(a)(1) (1988), and three counts of using or carrying a firearm during a drug trafficking offense, 18 U.S.C.A. § 924(c)(1) (West Supp. 1995). He was sentenced to eighty-seven months imprisonment for conspiracy, sixty months imprisonment for one § 924(c)(1) violation, and twenty years imprisonment for the second § 924(c)(1) violation. The district court departed downward and did not sentence Devita for the third firearms offense.

In his plea agreement, Devita expressly waived all appellate rights save his right to appeal the application of any sentencing enhancement provisions under § 924(c)(1). The sole question on appeal is whether that statute permits consecutive sentencing for multiple firearms offenses that are separate in time but charged in the same indictment. The parties now agree that Deal v. United States, ___ U.S. ___, 61 U.S.L.W. 4474 (U.S. May 17, 1993) (No. 91-8199), which answered that question affirmatively, is dispositive in this case. In light of Deal, we are convinced that enhancement of Devita's sentence was proper.

We therefore affirm the sentence. We dispense with oral argument because the facts and legal arguments are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED